



In the Matter of:

STEVEN J. SOLNICKA,

ARB CASE NO. 00-009

COMPLAINANT,

ALJ CASE NO. 99-ERA-19

v.

DATE: April 25, 2000

**WASHINGTON PUBLIC POWER SUPPLY
SYSTEM (ENERGY NORTHWEST),**

RESPONDENT.

BEFORE: THE ADMINISTRATIVE REVIEW BOARD

Appearances:

For the Complainant:

Steven J. Solnicka, Pro Se, Richland, Washington

For the Respondent:

Melvin N. Hatcher, Esq., Richland, Washington

**ORDER DENYING FIFTH MOTION FOR AN EXTENSION OF TIME AND
DISMISSING THE APPEAL**

The complainant, Steven J. Solnicka, has filed a Motion to Allow Introduction of New Evidence and Extension of Time to File It. Solnicka asserts that the new evidence is a report to be issued near the end of March concerning the adequacy of respondent Washington Public Power Supply System's (Washington Power) inspection and maintenance program for cranes. Solnicka "respectfully requests a 10 day business day extension from date the report will be released." Solnicka submitted the motion one day before his initial brief was due.

This case arises under the Energy Reorganization Act of 1974 (ERA), 42 U.S.C. §5851 (1995). On October 21, 1999, an Administrative Law Judge issued a Decision and Order Approving the Settlement Agreement and Dismissing the Appeal of the Complainant (ALJ D. & O.). The ALJ stated in the decision, "As the Complainant was pro se in this case, certain issues were discussed at

the hearing. The Complainant was assured that settlement of this federal case would have no bearing on issues raised at the state level.” ALJ D. & O. at 2.^{1/}

On November 2, 1999, Solnicka filed a petition for review of the ALJ D. & O. with the Administrative Review Board. In the petition Solnicka stated :

I believe the decision and order encompasses a much broader range of issues than I believed I was settling with my employer on August 16th, and August 17th, 1999. I believed I was agreeing not to pursue my claim of unlawful discrimination only. I did not believe I was settling any claims I have against my employer with the Washington State Department of Labor.

^{1/} At the hearing, the following exchange occurred between the ALJ, Solnicka, and Melvin N. Hatcher, counsel for Washington Power:

JUDGE MALAMPHY: In part 3 [Solnicka] wondered about the provision for filing of additional claims, and you talked about the state agency.

MR. SOLNICKA: Yes, Your Honor. I didn't want to – I want to – didn't want confusion with this agreement and the U.S. Department of Labor claims, in regards to the claims I have with the State of Washington Department of Labor.

JUDGE MALAMPHY: Mr. Hatcher?

MR. HATCHER: Yes. Your Honor, it's our – it's my understanding that Mr. Solnicka, within this release and settlement agreement, has a full opportunity and right to raise any issues in the future, and specifically with regard to issues that he has discussed with me concerning insurance benefits. This agreement does not cover insurance benefits.

Mr. Solnicka has also identified to me that he has some ongoing concerns with the crane program, and this agreement is not intended to preclude Mr. Solnicka from pursuing those types of issues to a full and complete, satisfactory resolution.

Hearing Transcript (Aug. 17, 1999) at 5.

Petition for Review at 1. On November 8, 1999, the Board issued a Notice of Appeal and Order Establishing Briefing Schedule. The ARB ordered Solnicka to file his initial brief by December 8, 1999. Solnicka subsequently requested a 30-day enlargement of time to file the brief. The Board granted the request and gave Solnicka until January 7, 2000, to file his brief. Solnicka filed for a second 30-day enlargement of time to file his brief. The Board granted the enlargement and gave him until February 7, 2000, to file his brief. Once more Solnicka filed for an enlargement of time to file the brief. Board granted Solnicka's motion, but cautioned him that further enlargements would be disfavored. Nevertheless, Solnicka subsequently filed for a fourth extension of time. The Board granted the enlargement until April 7, 2000, but stated that barring exceptional circumstances, it would not grant further requests for extension of the briefing schedule.

Solnicka failed to file his initial brief on April 7th as ordered. Instead on April 6th, Solnicka faxed the Motion to Allow Introduction of New Evidence and Extension of Time to File It. Even though the ARB had cautioned Solnicka that, barring exceptional circumstances, it would grant no further extensions of time, Solnicka waited until April 6th to request yet another extension of time. Furthermore, given the apparent grounds for Solnicka's appeal (that the settlement agreement may be interpreted to include the settlement of matters other than those arising under the ERA), whether the Washington State Department of Labor finds Washington Power's crane inspection and maintenance program to be adequate is totally irrelevant to the Board's resolution of the appeal. Accordingly, Solnicka has failed to demonstrate exceptional circumstances in support of his request for a fifth extension of time and his motion for such extension is **DENIED**.

Courts possess the "inherent power" to dismiss a case for lack of prosecution. *Link v. Wabash Railroad Co.*, 370 U.S. 626, 630 (1962). This power is "governed not by rule or statute but by the control necessarily vested in courts to manage their own affairs so as to achieve the orderly and expeditious disposition of cases." *Id.* at 630-631. Like the courts, this Board must necessarily manage its docket in an effort to "achieve the orderly and expeditious disposition of cases." Given Solnicka's failure to submit an initial brief as ordered, we find that Solnicka has failed to prosecute his case. Accordingly, we **DISMISS** Solnicka's appeal.

SO ORDERED.

PAUL GREENBERG

Chair

E. COOPER BROWN

Member

CYNTHIA L. ATTWOOD

Member